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NO COURT YESTERDAY

Gear Said He Was Sick and Cases Went Over.

There was no session of Circuit Court yesterday. The jury appeared as usual. A half dozen attorneys were in attendance, but at 9:30 o'clock, the time set for the opening of court, Judge Gear had not arrived. The absence of the Court caused no comment, for it is not an unusual thing for Gear to be from ten minutes to an hour late in opening his court.

The hearing of the argument in the Sumner case was set specially for yesterday morning, and Henry Highton and F. E. Thompson, who appeared for the respondent, were ready to proceed. John K. Sumner himself was on hand, as well as a number of other parties interested in the suit. George Davis, however, who appeared for the complainant, failed to appear. He very likely knew more about the Court's whereabouts than anyone else concerned.

A little before 10 o'clock Judge Gear's clerk, Frank Loucks, appeared and told the attorneys in the Sumner case that the judge would not be down.

Judge Robinson appeared on the bench a little after 10 o'clock, and after court was opened stated: "Judge Gear has requested me to announce that all matters set for hearing before him this morning should be continued until 10 o'clock tomorrow morning. The judge is unwell and will not be able to be here today."

Judge Robinson then made the order continuing the Sumner case, and in reply to a question from Deputy Attorney General Cathcart, stated that the criminal case would also go over until this morning. The jury was called and excused, also by Judge Gear's request, until 10 o'clock today. Court was then adjourned, as to term matters, for the day.

No information was obtained among court officials as to the character of Judge Gear's illness, though one of the jurors stated that he had seen the second judge on the street a short time before the hour set for the opening of court, and this was corroborated by the appearance of Gear himself in the afternoon. On a former occasion when Judge Gear was "unwell" he held court making a number of dismissals in criminal cases and forfeiting bail in others, and on the following day all these orders were set aside, the judge announcing that he had been "unwell" on the previous day, and did not want clients or attorneys to suffer from his actions.

APPEAL IN THE INCOME TAX CASE

Assignment of Errors Perfected in the Federal Court Yesterday.

The appeal in the income tax case was perfected yesterday and the papers will go to San Francisco on the next steamer.

The plaintiffs in the case of W. C. Peacock et al. vs. J. W. Pratt, as assessor, make an assignment of seventeen errors. The errors alleged are as to the holding of Judge Estee, that the allegation as to the condition of the Treasury was not material; that the court had no power to enjoin; that the passage of the act complained of was within the general power of the Legislature; that persons paying money by compulsion of legal process can recover it back and in holding that Section 3224 Revised Statutes had any bearing upon the case at issue.

Mr. Robertson, who appeared for the Territory, objected to paragraph ten of the bill of exceptions, which alleged that the court erred in dismissing the complaint absolutely and without leave to amend. He stated that the plaintiffs did not ask leave to amend and the exception therefore was not proper. Judge Estee held that the matter should properly be presented in the Court of Appeals and allowed the assignment of error.

MIXING FORMALIN WITH LOCAL MILK

The Board of Health will criminally prosecute cases where any further adulteration of milk with formalin is reported. This was decided upon yesterday after another report by Food Commissioner Shorey and an opinion from Attorney General Dole that the statutes now on the books were sufficient to enable the Board to act. All that is necessary in his opinion is to prove that the preservative is actually injurious to health, within the meaning of the act passed by the legislature. Dr. Sloggett and Dr. Moore were of the opinion that formalin was injurious to the health, particularly of children. The new opinion of the Attorney General made a regulation upon the subject unnecessary.

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